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2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
5 SAN JOSE DIVISION
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7 THOMAS HEATON SPITTERS,

8 Plaintiff,

9 v.

10 SANTA CLARA COUNTY,

11 Defendant.

Case No. [18-cv-02760-BLF](#)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE FOR
FAILURE TO COMPLY WITH COURT
ORDER**


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13 On June 20, 2018, the Court adopted Magistrate Judge Lloyd’s report and recommendation
14 (“Report”) to deny Plaintiff’s application to proceed in forma pauperis (“IFP”) and dismiss the
15 complaint with leave to amend. *See* ECF 14. The Court granted Plaintiff leave to amend and to
16 refile a completed IFP application, setting a deadline of July 13, 2018. *Id.* On July 15, 2018,
17 Plaintiff attempted to appeal to the Ninth Circuit the Court’s order adopting the Report. *See* ECF
18 17. On October 21, 2018, the Ninth Circuit rejected the appeal because the Order was neither final
19 nor appealable. *See* ECF 21. The Court then set the deadline for Plaintiff to file an amended
20 complaint and IFP form to November 26, 2018. *See* ECF 22. The Court warned that “[f]ailure to
21 file an amended complaint by this deadline will result in dismissal of the case without further
22 notice.” *See* ECF 22. Plaintiff did not file an amended complaint or new IFP form by the
23 deadline.

24 The Court has considered the five factors for determining whether to dismiss a case as a
25 sanction: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
26 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
27 disposition of cases on their merits; and (5) the availability of less drastic alternatives.” *Yourish v.*
28 *California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (citation omitted). Each of these factors

1 except the policy in favor of resolution of cases on the merits weighs in favor of dismissal without
2 prejudice. As such, the Court DISMISSES WITHOUT PREJUDICE Mr. Spitters' claims.

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4 **IT IS SO ORDERED.**

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6 Dated: December 3, 2018

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8 BETH LABSON FREEMAN
9 United States District Judge
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